



# Guideline

## Sales Tax Sales to American Indians

Cory Fong  
Tax Commissioner

December 2002

### Overview

A North Dakota Supreme Court decision dictates the following application of North Dakota state sales tax on sales made by or to American Indians.

1. An Indian retailer operating on an Indian reservation cannot be required to collect sales tax from *any* customer, Indian or non-Indian.
2. A non-Indian retailer operating on an Indian reservation may not collect sales tax from Indian customers but *must collect* sales tax on sales to non-Indians and remit that tax to the Office of State Tax Commissioner.
3. Any consumer, Indian or non-Indian, who makes a tax exempt purchase of tangible personal property on an Indian reservation and then uses or consumes the tangible personal property off the reservation is subject to North Dakota use tax. Non-Indian customers who make tax free purchases on the reservation are always subject to use tax, regardless where the product is used.
4. Purchases made by American Indians off an Indian reservation are taxable. However, deliveries by a retailer located off a reservation to an American Indian on the reservation are exempt. Deliveries to a non-Indian on an Indian reservation are taxable.

### Sales by an Indian Retailer on an Indian Reservation

An American Indian who operates a place of business within the boundaries of an Indian reservation *cannot* be required to collect North Dakota state sales tax on sales made to *any* customer, Indian or non-Indian, as long as the sale occurs on the reservation. Such an Indian retailer *cannot* be required to obtain a North Dakota sales and use tax permit or be required to file sales and use tax returns with the North Dakota Office of State Tax Commissioner as long as the business activity is conducted entirely within the boundaries of the Indian reservation. An Indian retailer who delivers merchandise off the reservation to customers, Indian or non-Indian, is required to collect and remit North Dakota use tax on those delivered sales. Only those sales completed on the reservation are exempt. Furthermore, any Indian customer or an Indian retailer who makes a purchase from that retailer on the reservation and then takes the merchandise off the reservation and uses it within this state is subject to North Dakota use tax on the purchase price of the merchandise. Non-Indian customers making purchases from an Indian retailer on an Indian Reservation are always subject to use tax, regardless where the goods are used.

### Sales by a Non-Indian Retailer on an Indian Reservation

A non-Indian retailer whose place of business is located within the boundaries of an Indian reservation is required to charge North Dakota sales tax to all non-Indian customers. A non-Indian retailer located on a reservation cannot be required to charge sales tax on sales made to American Indians if the sale takes place on the reservation. A non-Indian retailer is required to hold a North Dakota sales tax permit, is required to collect North Dakota sales tax on all sales to non-Indians and is required to report and remit all sales and use taxes due to the Office of State Tax Commissioner.

22079

## **Proof of Sale to an Indian**

The burden of proof that any retail sale is tax exempt because it is made to an Indian is placed entirely on the retailer. The Office of State Tax Commissioner holds the retailer responsible for adequate records which will identify these exempt sales. The Office of State Tax Commissioner will examine the books and records of each non-Indian retailer operating on an Indian reservation and will expect each retailer to furnish proof that all sales on which tax was not charged are in fact exempt sales. This applies whether the sale is claimed to be exempt as a sale in interstate commerce, a sale for resale or a sale to an Indian.

In a business where it is customary to have individual sales invoices, the name and address of Indian customers clearly should be shown on the invoice. In the event of an audit by the Office of State Tax Commissioner, these invoices will be reviewed and verified.

In business places where individual invoices are impractical and only cash register tapes are available, the Office of State Tax Commissioner representatives may contact the retailer and establish a percentage of sales made to Indian and to non-Indian customers. The percentage will be subject to adjustment based on seasonal sales, population shifts, economic factors and other indicators. Once this percentage is established with the Office of State Tax Commissioner, the retailer is authorized to use that percentage to report taxable sales as long as it equals at least the amount of tax collected. If the retailer collects more tax than would have to be paid based on the approved percentage, all of the tax collected must be remitted. If the tax collected is less than that which is due by applying the percentage, tax must be remitted based on the approved percentage and the retailer should request a review of the percentage used.

## **Delivery by a North Dakota Retailer, Indian and Non-Indian, Into an Indian Reservation**

A North Dakota retailer whose place of business is located outside the boundaries of an Indian reservation may occasionally make deliveries into an Indian reservation to Indian customers living within the boundaries of that reservation. The retailer may exempt those sales from North Dakota sales tax provided that the retailer actually delivers or has the merchandise delivered by a common carrier to an Indian customer residing within the boundaries of an Indian reservation and has provided proof of such delivery. The mere delivery of merchandise into an Indian reservation does not exempt the goods from North Dakota sales or use tax if the Indian customer is not going to use that merchandise exclusively within the boundaries of the reservation. Sales tax cannot be avoided by simply making delivery on an Indian reservation to an Indian customer when the merchant knows or should know that the customer will use the merchandise off the reservation. In each case, the Office of State Tax Commissioner examiners require proof of delivery by the North Dakota merchant in order to determine the exempt status of such deliveries. Deliveries to non-Indian customers on an Indian reservation are subject to tax.